

SENATE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

House Bill 290

Informational Testimony of Andy Gray, Bureau Chief Commodity Services Bureau, Montana Department of Agriculture

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Good afternoon, my name is Andy Gray, Bureau Chief of the Commodity Services Bureau with the Montana Department of Agriculture. The mission of the department is to protect agriculture, its consumers and its related industries.

House Bill 290 seeks to expand the licensure exemption from \$15,000 to \$45,000 for produce vendors who sell more than \$45,000 in gross retail annual sales. While the department supports small businesses, farmer markets, and other venues that promote the "grow and buy local" theme, we also believe it is important to be able to track produce products that may have a negative effect on Montana's agriculture.

The importation or movement of untraceable produce from outside a local area carries a risk of introduction and spread of pests or diseases. This bill would decrease the number of persons required to have a produce license and thereby, reduce the revenue of the department and reduce the ability of the department to trace products that could potentially be contaminated. Ideally, every produce vendor should be licensed so that the department could be better prepared to trace contaminated product should the need arise.

We are concerned about reduced revenue and have offered alternative language to HB 290 that would minimize the fiscal impact to the department and the risk to Montana agriculture while still allowing the vast majority (95% by our estimate) of small vendors selling Montana grown produce to be exempt from licensure. Using an inflation

calculator provided by the U. S. Department of Labor, Bureau of Labor Statistics, the \$15,000 level of exemption provided in 1993 is equal to \$21,918 in 2009.

We believe that an amendment to exempt from licensure producers with gross annual retail sales under \$25,000 instead of \$45,000 would provide a reasonable compromise. Program objectives and the department's mission statement would not be compromised and most small vendors will remain exempt and be able to maintain a business important to their communities.

As proposed, the department remains neutral on HB 290. However, if amended to allow for the objectives of the produce program to continue to be met, the department would urge a due pass of this bill.

As a point of interest, HB 478 will soon be scheduled for hearing within this committee and is a similar proposal in regard to the department's nursery program, although the negative impact on the department's revenue is much more significant. Director de Yong would respectfully request that the committee consider both bills for executive action at the same time.

Thank you.

2009 Montana Legislature

HOUSE BILL NO. 290

INTRODUCED BY W. GRINDE

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE LIMIT ON THE AMOUNT OF GROSS ANNUAL SALES THAT REQUIRES A PERSON WHO GROWS AND RETAILS MONTANA-GROWN PRODUCE TO PAY PRODUCE ASSESSMENT FEES AND OBTAIN A PRODUCE DEALER LICENSE; AMENDING SECTIONS 80-3-314 AND 80-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-3-314, MCA, is amended to read:

"80-3-314. Reporting requirements -- assessment fees -- exceptions. (1) Produce sold or distributed in this state must be reported, on forms approved by the department, and must be assessed a fee per for each produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents per for each produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding \$15,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer written that the assessment fees are being paid.

(3) The report and fees are due on or before the 30th day of the month following each calendar quarter.

(4) Payment of the produce assessment fee is not required on produce that is:

- (a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed \$15,000;
- (b) grown in this state, not packaged for market, and sold for resale by the grower;
- (c) in the case of vegetative seed potato products, intended or used for planting purposes; or
- (d) purchased from or distributed by a produce dealer licensed under 80-3-321 if the produce has been reported and the assessment fee has been paid."

Section 2. Section 80-3-321, MCA, is amended to read:

"80-3-321. Produce dealer license -- exception -- renewal. (1) A produce dealer license is required for any person who:

- (a) wholesales produce in this state;
- (b) transports produce from out of state into this state for retail sale; or
- (c) retails produce grown by the produce dealer in this state when gross retail sales exceed \$15,000 annually.

(2) A produce dealer license is not required for a person who complies with the requirements of this part and who:

(a) retails produce grown by that person in this state if annual gross produce sales do not exceed \$15,000 ~~however~~ However, the person ~~may~~ upon request by of the department ~~submit~~ that the produce was grown by that person, ~~and~~ stating the location where the produce was grown ~~of~~.

(b) ~~retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with this part.~~

(3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of this part. Produce dealer licenses expire on December 31 of the year of issuance. A produce dealer shall pay a nonrefundable license fee of \$50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in 80-3-314.

(4) A produce dealer license, if required, must be carried at any time produce is sold, and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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